

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CARLOS JAMES MIERA, JR.,)	
)	
Petitioner,)	
)	
vs.)	NO. CIV-21-0070-HE
)	
MATT MCDONALD,)	
)	
Respondent.)	

ORDER

Petitioner Carlos James Miera, Jr., a state prisoner appearing *pro se*, filed this case seeking habeas relief from his state court conviction. Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred to Magistrate Judge Shon T. Erwin for initial proceedings. After reviewing petitioner’s filings, Judge Erwin ordered the Oklahoma Attorney General to respond to the petition. Judge Erwin has now issued a Report and Recommendation recommending that the petition be denied. Petitioner has objected to the Report which triggers *de novo* review of matters to which objection has been made.


The petition raises two grounds for relief, denial of due process and ineffective assistance of appellate counsel. Petitioner’s objection fails to address the Report’s recommendations as to either of these grounds for relief. Rather, the objection appears to raise a separate ground for relief, that the trial court erred in permitting the jury to break sequestration — an issue that was raised before and rejected by the Oklahoma Court of

Criminal Appeals in petitioner's direct appeal of his conviction.¹ Because this issue is not raised in the petition and addressed in the Report, the court will not consider this argument. The court concludes that the Report properly addresses the grounds for relief raised in the petition.

Accordingly, the Report and Recommendation [Doc. #14] is **ADOPTED**. The petition for habeas relief is **DENIED**. The court also concludes that a certificate of appealability should not issue because petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

Dated this 7th day of September, 2021.



JOE HEATON
UNITED STATES DISTRICT JUDGE

¹ While not ruling on this ground for relief, the court notes that the OCCA's decision on this issue was neither contrary to or an unreasonable application of federal law nor was it based on an unreasonable determination of the facts in light of the evidence.